

REMARKS

Reconsideration of this application is requested in view of the amendments to the claims and the remarks presented herein.

The claims in the application are claims 1 to 9, no other claims having been presented.

Claims 3 and 8 were deemed to be drawn to allowable subject matter. Claim 8 has been rewritten in independent form and is now deemed to be allowable as well as claim 9 which is dependent thereupon.

Claims 3, 6 and 7 were rejected under 35 USC 112 as being indefinite. The Examiner objected to the "benzene derivatives" as being indefinite and claim 6 was rejected as being indefinite in the term "gradually". Claim 7 was objected to as being indefinite in the expression "flow rate".

Applicant respectfully traverse these grounds of rejection since it is deemed that the claims as amended are believed to be proper. Claim 3 has been amended to refer to "azoles and benzo-fused derivatives of azoles" and is now believed to be proper. Claim 6 has the word "gradually" therein and is not believed indefinite since a meaning of the

word "gradually" in chemistry is recognized and used to make the difference between the addition according to the present invention and an addition of all the reactive without any particular precaution. Moreover, the Applicant further points out that another patent has been granted to him (US 6,794,547) with such wording in the main claim. With respect to claim 7, the flow rate has been amended to replace ".h" with the expression "per hour" and is now believed to be proper. Therefore, withdrawal of these grounds of rejection is requested.

Claims 1, 2, 4 to 7 and 9 were rejected under 35 USC 103 as being obvious over the Fischer et al patent taken in view of the Smith et al literature reference. The Examiner states that the process would have been obvious to one of ordinary skill in the art given the teaching of the Fischer et al patent and the Smith et al reference since the Fischer et al patent teaches a method of methylation of heterocycles preferably, butyrolactones and pyrrolidones and that the process is carried out at a temperature of 150 to 230°C and a pressure of 0.5 to 5.0 bar which are within the claimed ranges. The Examiner concedes that Fischer et al does not teach a continuous embodiment of a continuous process is expressly suggested. The Smith et al reference is relied upon to show typical continuous chemical processes. Therefore, the Examiner deems the invention would be obvious therefrom.

Applicant respectfully traverses this ground of rejection since the combination of

the prior art that the Examiner has combined with the benefit of applicant's disclosure would not be made by one skilled in the art. The Fisher, et al. reference discloses a process of methylation of N-methylpyrrolidone with dimethyl carbonate as a methylating agent and the main difference is the position of the reactor atom. Fischer discloses a reaction in alpha position to a carbonyl group which is a C-methylation whereas the object of applicant's invention is N-methylation. One skilled in the art knows these two types of reactions are very different due to the difference of the reactivity between an activated carbon and a nitrogen atom.

Another major difference between applicant's invention and the Fisher, et al reference is the continuous removal of methanol in applicant's process and possibly the Examiner misunderstands the invention. The applicant does not intend to claim a continuous process but a process where methanol as a bi-product is removed as soon as it is formed. This main characteristic applies to a continuous process where the reactant is added gradually as well as to a batch process. One skilled in the art would not combine the Fisher, et al. reference with the Smith, et al. reference which further does not compensate for the deficiencies in the Fisher, et al. Patent.

Applicant is submitting herewith an article by Tundo, et al. which deals with reactivity and selectivity of nitrogen nucleophilic cells towards dimethyl carbonate and shows the absence of any selectivity if no base is added. The process of the present

invention however, shows that to the contrary, selectivity without the use of any base and shows that even at a later date, one skilled in the art is rather led away from the applicant's invention and it was not even obvious in 2005. Therefore, the combination of the prior art fails and withdrawal of these grounds of rejection is requested.

In view of the amendment to the claims and these remarks presented herein, it is believed that the claims clearly point out applicant's patentable contribution and favorable reconsideration of this application is requested.

Respectfully submitted,  
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Enclosure